

ORDERED.

Dated: July 11, 2023



Lori V. Vaughan
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)	
)	Case No. 6:22-bk-01524-LVV
Nadira Lekhraj,)	Chapter 7
)	
Debtor.)	
_____)	
)	
Jaspup Property Holdings, LLC and)	
Mahendra Ramsarup,)	
)	
Plaintiffs,)	Adversary No. 6:22-ap-00069-LVV
)	
vs.)	
)	
Nadira Lekhraj)	
)	
Defendant.)	
_____)	

**ORDER DENYING PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT ON COUNTS IV-VI**

THIS PROCEEDING came before the Court without a hearing on the Motion for Summary Judgment on Counts IV-VI (Doc. No. 18) (“Motion”) filed by Plaintiffs, Jaspup Property Holdings, LLC and Mahendra Ramsarup (“Plaintiffs”) and the response to the Motion filed by Defendant, Nadira Lekhraj (“Debtor” or “Defendant”).¹ Having reviewed the Motion and its exhibits, along

¹ Debtor’s response is at Doc. No. 23. Plaintiffs’ reply and highlighted Exhibit 8 is at Doc. Nos. 27 and 28.

with Debtor's response and Plaintiffs' reply, and considering the summary judgment standard under Fed. R. Civ. P. 56, the Motion is denied.

Plaintiffs request summary judgment on Counts IV, V and VI of the complaint which seek to deny the Debtor a discharge under 11 U.S.C. § 727(a)(2),(3) and (4). Plaintiffs argue no genuine issue as to any material fact exist as to: Count IV that Debtor with intent to hinder, delay or defraud a creditor, transferred or concealed assets before and after the bankruptcy filing under § 727(a)(2); Count V that Debtor failed to maintain adequate records under § 727(a)(3); and Count VI that Debtor made a false oath by failing to disclose assets under § 727(a)(4). Debtor denies Plaintiffs met their burden and requests trial proceed as scheduled on July 19, 2023.

Under Federal Rule of Civil Procedure 56(a), incorporated by Federal Rule of Bankruptcy Procedure 7056, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant must cite "particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only) admissions, interrogatory answers or other materials" to prove a material fact is not genuinely disputed. Fed. R. Civ. P. 56(c). The party seeking summary judgment "always bears the initial responsibility" of informing the court of the basis for its motion and identifying those portions of the record "which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Plaintiffs have not met their initial burden. The record does not contain sufficient evidence to allow Plaintiffs to prevail on summary judgment. Plaintiffs rely on Debtor's testimony at a Rule 2004 examination to support facts asserted in the Motion as to Counts IV, V and VI and Debtor's intent; however, a transcript of the Rule 2004 examination is not in the court record. Plaintiffs did not provide sufficient evidence, such as a vehicle title, to demonstrate Debtor's ownership interest

in the Toyota 4Runner—an asset Debtor allegedly failed to disclose. Nor did Plaintiffs identify specific records Debtor failed to maintain. Furthermore, to the extent Plaintiffs do have a well-supported summary judgment for Counts IV, V and VI, the Court believes the better course under these circumstances is to proceed to trial. *See Furr v. Genetic & Woods, Inc. (In re Vargas)*, Case No. 22-11703, 2023 WL 2621245 (Bankr. S.D. Fla. Mar. 23, 2023) citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (court has discretion to deny summary judgment if the better course is to proceed to full trial). Trial is scheduled in less than two weeks. Debtor's credibility is at issue and the record is not entirely clear. The Court prefers to consider Debtor's testimony in-person at trial before rendering a decision. Accordingly, it is

ORDERED that Plaintiffs' Motion for Summary Judgment on Counts IV-VI (Doc. No. 18) is DENIED.

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Attorney John M. Brennan is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a Proof of Service within 3 days of entry of the order